

ARKANSAS CODE OF 1987 ANNOTATED



2011 SUPPLEMENT VOLUME 17C

Place in pocket of bound volume

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
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Supplement pamphlet for Volume 1*

4068711

ISBN 978-0-327-10031-7 (Code set)
ISBN 978-1-4224-6368-0 (Volume 17C)



Matthew Bender & Company, Inc.
701 East Water Street, Charlottesville, VA 22902
www.lexisnexis.com

TITLE 17

PROFESSIONS, OCCUPATIONS, AND BUSINESSES

(CHAPTERS 1-28 IN VOLUME 17A; CHAPTERS 29-79 IN
VOLUME 17B)

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SUBTITLE 3. MEDICAL PROFESSIONS

CHAPTER 82

DENTISTS, DENTAL HYGIENISTS, AND DENTAL ASSISTANTS

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SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-82-110. Administration of fluoride var-

nish by physicians and
nurses.

17-82-110. Administration of fluoride varnish by physicians and nurses.

(a) Following a risk assessment of the child's oral health approved by the Department of Health, a physician may apply fluoride varnish to a child's teeth after the physician has completed training on dental caries risk assessment and fluoride varnish application approved by the department.

(b) Under physician supervision approved by the department, fluoride varnish application may be delegated to a nurse or other licensed

health care professional who has completed training on dental caries risk assessment and fluoride varnish application approved by the department.

History. Acts 2011, No. 90, § 1. provided: "The Department of Health
A.C.R.C. Notes. Acts 2011, No. 90, § 2, shall adopt rules to implement this act."

SUBCHAPTER 3 — LICENSING GENERALLY

SECTION.

17-82-303. Examinations.

17-82-303. Examinations.

(a) The Arkansas State Board of Dental Examiners has exclusive jurisdiction to determine who shall be permitted to practice dentistry and dental hygiene in the State of Arkansas.

(b) To this end the board, at its regular annual meeting and at special meetings if it deems it necessary or expedient, shall conduct examinations, both written and clinical, of all qualified applicants who desire to practice dentistry or dental hygiene in the State of Arkansas.

(c) The Arkansas State Board of Dental Examiners is authorized and directed to conduct at least two (2) examinations annually, both written and clinical, of qualified applicants who desire to practice dentistry in the State of Arkansas. Special meetings for those purposes may be held by the board if it deems it necessary or expedient. The two (2) examinations to be held annually shall be scheduled in such a manner as to be conducted following the end of the fall and spring semesters of dental schools in order to accommodate, insofar as is practicable, the greater number of qualified applicants who wish to take examinations to practice dentistry in Arkansas shortly after completion of their regular dental schooling.

(d) The board may accept the results of the National Board of Dental Examiners examination if it so desires and may cooperate with dental schools in other states for the administration of the clinical examination or may cooperate with other states in the administration of a regional clinical examination.

(e)(1) The board shall determine what grade or percentage the applicant must make to entitle him or her to be licensed.

(2) The grade or percentage shall be the same at any one (1) examination for all applicants.

(f) The board may consider the conduct of the applicant during the examination as a factor in determining the grade or percentage to be given him or her.

History. Acts 1955, No. 14, § 19; 1973, No. 85, § 2; 1974 (1st Ex. Sess.), No. 64, § 2; A.S.A. 1947, §§ 72-552, 72-552.1; Acts 2011, No. 47, § 2.

Amendments. The 2011 amendment deleted "but it shall never be lower than seventy-five percent (75%)" from the end of (e)(2).

SUBCHAPTER 7 — DENTAL HYGIENIST COLLABORATIVE CARE PROGRAM

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17-82-701. Definitions.

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SECTION.

17-82-705. Permission of the Department of Health — Responsibilities of the Department of Health.

17-82-706. Rules.

17-82-707. Malpractice insurance.

17-82-701. Definitions.

As used in this subchapter:

(1) "Collaborative agreement" means a written agreement between a dentist licensed by the Arkansas State Board of Dental Examiners and a dental hygienist licensed by the Arkansas State Board of Dental Examiners providing that the dental hygienist may provide prophylaxis, fluoride treatments, sealants, dental hygiene instruction, assessment of a patient's need for further treatment by a dentist, and if delegated by the consulting dentist, other services provided by law to children, senior citizens, and persons with developmental disabilities in a public setting without the supervision and presence of the dentist and without a prior examination of the persons by the dentist;

(2) "Collaborative dental hygienist" means a dental hygienist who holds a Collaborative Care Permit I, a Collaborative Care Permit II, or both, from the Arkansas State Board of Dental Examiners and who has entered into a collaborative agreement with no more than one (1) consulting dentist regarding the provision of services under this subchapter;

(3) "Consulting dentist" means a dentist who holds a Collaborative Dental Care Permit from the Arkansas State Board of Dental Examiners and:

(A) If engaged in the private practice of dentistry, has entered into a collaborative agreement with no more than three (3) collaborative dental hygienists regarding the provision of services under this subchapter; or

(B) Is employed by the Department of Health;

(4) "Medicaid" means the medical assistance program established under § 20-77-101 et seq.;

(5) "Public settings" means:

(A) Adult long-term care facilities;

(B) Charitable health clinics that provide free or reduced-fee services to low-income patients;

(C) County incarceration facilities;

(D) Facilities that primarily serve developmentally disabled persons;

(E) Head Start programs;

(F) Homes of homebound patients who qualify for in-home medical assistance;

(G) Hospital long-term care units;

- (H) Local health units;
- (I) Schools;
- (J) Community health centers; and
- (K) State correctional institutions; and

(6) "Senior citizen" means a person sixty-five (65) years of age or older.

History. Acts 2011, No. 89, § 1.

17-82-702. Permits — Fees.

(a)(1) A dental hygienist licensed by the Arkansas State Board of Dental Examiners is eligible for a Collaborative Care Permit I if the dental hygienist has:

(A) Practiced as a dental hygienist for one thousand two hundred (1,200) clinical hours; or

(B) Taught for two (2) academic years over the course of the immediately preceding three (3) academic years courses in which a person enrolls to obtain necessary academic credentials for a dental hygienist license.

(2) A dental hygienist licensed by the board is eligible for a Collaborative Care Permit II if the dental hygienist has:

(A) Practiced as a dental hygienist for one thousand eight hundred (1,800) clinical hours; or

(B)(i) Taught for two (2) academic years over the course of the immediately preceding three (3) academic years courses in which a person enrolls to obtain necessary academic credentials for a dental hygienist license; and

(ii) Completed a six-hour continuing-education dental course.

(3) A dentist licensed by the board is eligible for a Collaborative Dental Care Permit.

(b)(1)(A) The board may charge a fee to a dentist who applies for a collaborative dental care permit.

(B) The board shall calculate the fee to cover the costs of administering and processing the application and the costs of inspecting the dentist's practice to determine his or her compliance with rules adopted under this subchapter.

(2)(A) The board may charge a fee to a registered dental hygienist who applies for a collaborative dental care permit.

(B) The board shall calculate the fee to cover the costs of administering and processing the application and the costs of inspecting the registered dental hygienist's practice to determine his or her compliance with rules adopted under this subchapter.

(3)(A) A dentist or registered dental hygienist who holds a collaborative dental care permit shall renew the permit at the same time as a dentist's or registered dental hygienist's permit shall expire.

(B)(i) The board may charge a renewal fee for administering the renewal of the permit.

(ii) The board shall calculate the fee to cover the costs of administering and processing the renewal of the permit.

History. Acts 2011, No. 89, § 1.

17-82-703. Provision of services by collaborative dental hygienists.

(a) A collaborative dental hygienist who obtains a Collaborative Care Permit I may provide prophylaxis, fluoride treatments, sealants, dental hygiene instruction, assessment of the patient's need for further treatment by a dentist, and other services provided by law if delegated by the consulting dentist to children in a public setting without the supervision and direction of a dentist and without a prior examination of the patient by the consulting dentist.

(b) A collaborative dental hygienist who holds a Collaborative Care Permit II may provide prophylaxis, fluoride treatments, sealants, dental hygiene instruction, assessment of the patient's need for further treatment by a dentist, and other services provided by law if delegated by the consulting dentist to children, senior citizens, and persons with developmental disabilities in public settings without the supervision and direction of a dentist and without a prior examination of the patient by the consulting dentist.

History. Acts 2011, No. 89, § 1.

17-82-704. Reimbursement.

(a) A health insurance company, Medicaid, or other person that pays a fee for service performed by a collaborative dental hygienist under this subchapter shall submit the payment directly to the consulting dentist.

(b) If a health insurance company, Medicaid, or other person pays a fee for service performed by a dental hygienist under this subchapter to the collaborative dental hygienist, the collaborative dental hygienist shall deliver the payment to the consulting dentist.

(c)(1) If, however, language in the collaborative agreement required under this subchapter conflicts with a federal law, a federal rule, or a federal regulation, the federal law, federal rule, or federal regulation shall control, and the conflicting language of the agreement shall be disregarded.

(2) For the limited purposes of medicaid reimbursement under this subchapter, the collaborative dental hygienist is deemed to be an employee of the consulting dentist, and the collaborative dental hygienist as a condition of employment under this subchapter shall submit the medicaid payment for services performed under this subchapter to the consulting dentist.

History. Acts 2011, No. 89, § 1.

17-82-705. Permission of the Department of Health — Responsibilities of the Department of Health.

(a) In order for a collaborative dental hygienist to provide services to persons under this subchapter, the consulting dentist with whom the collaborative dental hygienist has entered a collaborative agreement must have received permission from the Department of Health for the collaborative dental hygienist to serve patients at public settings designated by the department on a date or dates designated by the department.

(b) The department shall develop a system of prioritization of services permitted under this subchapter to communities in the state, including rural areas, based on the relative population of people at need for services permitted under this subchapter and endeavor to direct services permitted under this subchapter to such communities, including rural areas.

History. Acts 2011, No. 89, § 1.

17-82-706. Rules.

(a) The Arkansas State Board of Dental Examiners shall adopt rules to implement §§ 17-82-701 — 17-82-704.

(b) The State Board of Health shall adopt rules to implement § 17-82-705.

History. Acts 2011, No. 89, § 1.

17-82-707 Malpractice insurance.

A collaborative dental hygienist who provides services permitted under this subchapter shall be insured under a malpractice liability policy for the provision of the services.

History. Acts 2011, No. 89, § 1.

SUBCHAPTER 8 — CRIMINAL BACKGROUND CHECKS**SECTION.**

17-82-801. Criminal Background Check.

17-82-802. License eligibility.

SECTION.

17-82-803. Waiver.

17-82-804. Background records sealed.

17-82-801. Criminal Background Check.

(a)(1) Beginning July 1, 2011, every person applying for a license or renewal of a license issued by the Arkansas State Board of Dental Examiners shall provide written authorization to the board to allow the Department of Arkansas State Police to release the results of state and federal criminal history background check reports to the board.

(2) The applicant shall pay the fees associated with the background checks.

(b)(1) The Identification Bureau of the Department of Arkansas State Police shall perform the state criminal background check.

(2) The federal background check shall be requested from the Federal Bureau of Investigation and shall include the taking of fingerprints of the applicant.

(c) Upon completion of the criminal background checks, the Identification Bureau shall forward to the board all releasable information obtained concerning the applicant.

(d) At the conclusion of any background check under this section, the Identification Bureau shall retain the fingerprinting card of the applicant until notified by the board that the person is no longer licensed.

History. Acts 2011, No. 47, § 1.

17-82-802. License eligibility.

A person shall not be eligible to receive or hold a license to practice dentistry or another health care profession issued by the Arkansas State Board of Dental Examiners if the person has pleaded guilty or nolo contendere or has been found guilty of either an infamous crime that would impact his or her ability to practice dentistry or oral hygiene in the State of Arkansas or a felony, regardless of whether the conviction has been sealed, expunged, or pardoned.

History. Acts 2011, No. 47, § 1.

17-82-803. Waiver.

(a) Section 17-82-802 may be waived by the Arkansas State Board of Dental Examiners upon the request of:

- (1) An affected applicant for licensure; or
- (2) The person holding the license subject to revocation.

(b) The board may consider the following circumstances when considering a waiver, including without limitation:

- (1) The age at which the crime was committed;
- (2) The circumstances surrounding the crime;
- (3) The length of time since the crime;
- (4) Subsequent work history;
- (5) Employment references;
- (6) Character references; and
- (7) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of the public.

History. Acts 2011, No. 47, § 1.

17-82-804. Background records sealed.

(a) A background record received by the Arkansas State Board of Dental Examiners from the Identification Bureau of the Department of Arkansas State Police shall not be available for examination except by:

(1) An affected applicant for licensure or his or her authorized representative; or

(2) A person whose license is subject to revocation or his or her authorized representative.

(b) A record, file, or document shall not be removed from the custody of the department.

History. Acts 2011, No. 47, § 1.

CHAPTER 87

NURSES

SUBCHAPTER.

1. GENERAL PROVISIONS.
3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-87-103. Exceptions.

17-87-103. Exceptions.

This chapter does not prohibit:

(1) The furnishing of nursing assistance in an emergency;

(2) The practice of nursing that is incidental to their program of study by students enrolled in nursing education programs approved by the Arkansas State Board of Nursing;

(3) The practice of any legally qualified nurse of another state who is employed by the United States Government or any bureau, division, or agency while in the discharge of his or her official duties in installations where jurisdiction has been ceded by the State of Arkansas;

(4) The practice of any legally qualified and licensed nurse of another state, territory, or foreign country whose responsibilities include transporting patients into, out of, or through this state while actively engaged in patient transport that does not exceed forty-eight (48) hours in this state;

(5) Nursing or care of the sick when done in connection with the practice of the religious tenets of any church by its adherents;

(6) The care of the sick when done in accordance with the practice of religious principles or tenets of any well-recognized church or denomination that relies upon prayer or spiritual means of healing;

(7) The administration of anesthetics under the supervision of, but not necessarily in the presence of, a licensed physician, dentist, or other person lawfully entitled to order anesthesia by a graduate nurse anesthetist awaiting certification results while holding a temporary permit;

(8) The administration of anesthetics under the supervision of, but not necessarily in the presence of, a licensed physician, dentist, or other

person lawfully entitled to order anesthesia by a registered nurse who is enrolled as a bona fide student pursuing a course in a nurse anesthesia school that is approved by a nationally recognized accrediting body and whose graduates are acceptable for certification by a nationally recognized certifying body, provided the giving or administering of the anesthetics is confined to the educational requirements of the course and under the direct supervision of a qualified instructor;

(9) Hospital-employed professional paramedics from administering medication for diagnostic procedures under the direction of a physician;

(10) The prescription and administration of drugs, medicines, or therapeutic devices in the presence of and under the supervision of an advanced practice nurse holding a certificate of prescriptive authority, a licensed physician, or licensed dentist by a registered nurse who is enrolled as a student in an advanced pharmacology course, provided the prescription or administration of drugs or medicines, or both, is confined to the educational requirements of the course and under the direct supervision of a qualified instructor;

(11)(A) The administration of glucagon to a student who is suffering from type 1 diabetes by trained volunteer school personnel designated as care providers in a plan developed under Section 504 of the Rehabilitation Act of 1973, as it existed on July 1, 2011, who have been trained by a licensed nurse employed by a school district or other health-care professional to administer glucagon to a child with type 1 diabetes in an emergency situation.

(B)(i) A licensed nurse employed by a school district or other health-care professional shall annually train volunteer school personnel designated as care providers in a plan developed under Section 504 of the Rehabilitation Act of 1973, as it existed on July 1, 2011, to administer glucagon to a student with type 1 diabetes.

(ii) The parent or guardian of a student with type 1 diabetes shall sign an authorization to allow the administration of glucagon to the student by volunteer school personnel designated as care providers.

(iii) The school district shall maintain a copy of the plan developed under Section 504 of the Rehabilitation Act of 1973, as it existed on July 1, 2011, a list of volunteer school personnel who are designated as care providers and trained to administer glucagon, and a copy of the parent's or guardian's signed authorization.

(C) A school district, school district employee, or an agent of a school district, including a health-care professional who trained volunteer school personnel designated as care providers, shall not be liable for any damages resulting from his or her actions or inactions under this section.

(D) The Arkansas State Board of Nursing and the State Board of Education shall promulgate rules necessary to administer this subdivision (11); or

(12)(A) Health maintenance activities by a designated care aide for a:

(i) Competent adult at the direction of the adult; or

(ii) Minor child or incompetent adult at the direction of a caretaker.

(B) As used in this section:

(i) "Caretaker" means a person who is:

(a) Directly and personally involved in providing care for a minor child or incompetent adult; and

(b) The parent, foster parent, family member, friend, or legal guardian of the minor child or incompetent adult receiving care under subdivision (12)(B)(i)(a) of this section;

(ii) "Competent adult" means an individual who:

(a) Is eighteen (18) years of age or older; and

(b) Has the capability and capacity to make an informed decision; and

(iii) "Health maintenance activities" means activities that:

(a) Enable a minor child or adult to live in his or her home; and

(b) Are beyond activities of daily living that:

(1) The minor child or adult is unable to perform for himself or herself; and

(2) The attending physician, advanced practice nurse, or registered nurse determines can be safely performed in the minor child's or adult's home by a designated care aide under the direction of a competent adult or caretaker.

(C) As used in this section, "home" does not include:

(i) A nursing home;

(ii) An assisted living facility;

(iii) A residential care facility;

(iv) An intermediate care facility; or

(v) A hospice care facility.

(D) The board, with the input of the Home Health Care Service Agency Advisory Council, the Arkansas Health Care Association, and the Arkansas Residential Assisted Living Association, shall promulgate rules specifying which health maintenance activities are not exempted under this subdivision (12) and the minimal qualifications required of the designated care aide.

History. Acts 1971, No. 432, §§ 1, 2, 17; 1979, No. 404, §§ 1, 7; 1979, No. 613, §§ 1, 2; 1980 (1st Ex. Sess.), No. 14, §§ 1, 3; 1985, No. 189, § 2; A.S.A. 1947, §§ 72-745, 72-746, 72-761; Acts 1995, No. 409, § 3; 1997, No. 1065, § 2; 2005, No. 1440, § 1; 2011, No. 1204, § 1.

A.C.R.C. Notes. Acts 2011, No. 1204, § 1 omitted language without striking through previously existing language in amending § 17-87-103 (12)(B)(i)(b) and added new language without underlining the amending language in § 17-87-103

(12)(B)(i)(b). A.C.R.C. has determined that the omitted language was intended to be repealed, the new language is amending language that replaces the repealed language, and § 17-87-103 (12)(B)(i)(b) is set out to reflect that intent.

Amendments. The 2011 amendment inserted present (11) and redesignated the following subdivision accordingly; substituted "(12)(B)(i)(a)" for "(11)(B)(i)(a)" in present (12)(B)(i)(b); and substituted "this subdivision (12)" for "this subdivision (11)" in present (12)(D).

SUBCHAPTER 3 — LICENSING

SECTION.

17-87-312. Criminal background checks.

17-87-312. Criminal background checks.

(a) Each first-time applicant for a license issued by the Arkansas State Board of Nursing shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (e) of this section.

(e) Except as provided in subdivision (1)(1) of this section, no person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to or has been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Negligent homicide as prohibited in § 5-10-105;
- (5) Kidnapping as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree as prohibited in § 5-11-103;
- (7) Permanent detention or restraint as prohibited in § 5-11-106;
- (8) Robbery as prohibited in § 5-12-102;
- (9) Aggravated robbery as prohibited in § 5-12-103;
- (10) Battery in the first degree as prohibited in § 5-13-201;
- (11) Aggravated assault as prohibited in § 5-13-204;
- (12) Introduction of a controlled substance into the body of another person as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree as prohibited in § 5-13-301;
- (14) Rape as prohibited in § 5-14-103;
- (15) Sexual indecency with a child as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;
- (17) Incest as prohibited in § 5-26-202;

(18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;

(19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;

(20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;

(21) Permitting abuse of a minor as prohibited in § 5-27-221(a);

(22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;

(23) Felony adult abuse as prohibited in § 5-28-103;

(24) Theft of property as prohibited in § 5-36-103;

(25) Theft by receiving as prohibited in § 5-36-106;

(26) Arson as prohibited in § 5-38-301;

(27) Burglary as prohibited in § 5-39-201;

(28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 — 5-64-442;

(29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;

(30) Stalking as prohibited in § 5-71-229;

(31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;

(32) Computer child pornography as prohibited in § 5-27-603; and

(33) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

(f)(1)(A) The board may issue a nonrenewable temporary permit for licensure to a first-time applicant pending the results of the criminal background check.

(B) The permit shall be valid for no more than six (6) months.

(2) Except as provided in subdivision (l)(1) of this section, upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding the letter of provisional licensure has pleaded guilty or nolo contendere to, or has been found guilty of, any offense listed in subsection (e) of this section, the board shall immediately revoke the provisional license.

(g)(1) The provisions of subsection (e) and subdivision (f)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of the public.

(h)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by:

(A) The affected applicant for licensure or his or her authorized representative; or

(B) The person whose license is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(i) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(j) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than this background check.

(k) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(l)(1) For purposes of this section, an expunged record of a conviction or a plea of guilty or nolo contendere to an offense listed in subsection (e) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (l)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

(A) Capital murder as prohibited in § 5-10-101;

(B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(C) Kidnapping as prohibited in § 5-11-102;

(D) Rape as prohibited in § 5-14-103;

(E) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;

(F) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205 and endangering the welfare of a minor in the second degree as prohibited in § 5-27-206;

(G) Incest as prohibited in § 5-26-202;

(H) Arson as prohibited in § 5-38-301;

(I) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201; and

(J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

History. Acts 1999, No. 1208, § 4; 2001, No. 303, §§ 2-4; 2003, No. 103, §§ 1, 2; No. 1087, § 15; No. 1386, § 1; No. 1449, § 1; 2005, No. 1923, § 2; 2011, No. 570, § 121.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The in-

tent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment, in (e)(28), inserted "the former" and "and §§ 5-64-419 — 5-64-442."

CHAPTER 92

PHARMACISTS AND PHARMACIES

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17-92-101. Definitions.

As used in this chapter:

- (1) "Board" means the Arkansas State Board of Pharmacy;
- (2) "Credentialing" means the issuance of or approval by the Arkansas State Board of Pharmacy of a credential issued to a pharmacist by an agency approved by the board certifying that the pharmacist has met the standards of competency established by the Arkansas State Board of Pharmacy for disease state management or other pharmacy services necessitating a credential;
- (3) "Dentist" means a practitioner of dentistry duly licensed under the laws of this or some other state;
- (4)(A) "Disease state management" means a strategy that utilizes a team-oriented, multidisciplinary approach to improve health care outcomes and quality of care, and when possible, to control health care cost through management of targeted chronic disease states.
 (B) Disease state management focuses on improving health care from prevention to diagnosis and treatment to ongoing follow-up.
 (C) Disease state management will involve, but not be limited to, patient education, self-care techniques, and outpatient drug therapy management pursuant to a patient care plan;
- (5) "Drug" shall include all medicines and preparations recognized in the United States Pharmacopeia or the National Formulary as sub-

stances intended to be used for the care, mitigation, or prevention of disease of either man or other animals;

(6) "Generically equivalent" means a drug that is pharmaceutically and therapeutically equivalent to the drug prescribed;

(7) "Licensed pharmacist" means a person holding a license under the provisions of this chapter;

(8) "Medicine" means a drug or preparation of drugs in suitable form for use as a curative or remedial substance;

(9) "Optometrist" means a practitioner of optometry duly licensed under the laws of this state;

(10) "Patient care plan" means a written course of action that is patient- or physician- or pharmacist-specific and disease-specific for helping a patient to achieve outcomes that improve a patient's quality of life;

(11) "Pharmaceutically equivalent" means drug products that have identical amounts of the same active chemical ingredients in the same dosage form and that meet the identical, compendious, or other applicable standards of strength, quality, and purity according to the United States Pharmacopeia or another nationally recognized compendium;

(12) "Pharmacy" means the place licensed by the Arkansas State Board of Pharmacy in which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail;

(13) "Pharmacy care" means the process by which a pharmacist in consultation with the prescribing practitioner identifies, resolves, and prevents potential and actual drug-related problems and optimizes patient therapy outcomes through the responsible provision of drug therapy or disease state management for the purpose of achieving any of the following definite outcomes that improve a patient's quality of life:

(A) Cure of disease;

(B) Elimination or reduction of a patient's symptomology;

(C) Arresting or slowing a disease process; or

(D) Preventing a disease or symptomology;

(14) "Physician" means a practitioner of medicine duly licensed under the laws of this or some other state;

(15) "Poisons" means any drug, chemical, medicine, or preparation liable to be destructive to adult human life in quantities of sixty (60) grains or less;

(16)(A) "Practice of pharmacy" means the learned profession of:

(i)(a) Dispensing, selling, distributing, transferring possession of, vending, bartering, or, in accordance with regulations adopted by the Arkansas State Board of Pharmacy, administering drugs, medicines, poisons, or chemicals that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription and order of a practitioner authorized by law to prescribe drugs, medicines, poisons, or chemicals.

(b) Except in accordance with regulations adopted by the Arkansas State Board of Pharmacy as recommended by the Medications

Administration Advisory Committee, the administration of medications shall be limited to the following classifications of medications: immunizations, vaccines, allergy medications, vitamins, minerals, antihyperglycemics, and antinausea medications.

(c) Influenza vaccines and influenza immunizations may be administered to a person seven (7) years of age and older under a general written protocol.

(d) Vaccines and immunizations other than influenza vaccines and influenza immunizations may be administered to a person from seven (7) years of age to eighteen (18) years of age under a patient-specific order or prescription and subject to reporting of the administration to the prescribing physician together with any reporting required under § 20-15-1203.

(e) Vaccines and immunizations other than influenza vaccines and influenza immunizations may be administered to a person eighteen (18) years of age or older under a general written protocol.

(f) Medications other than vaccines and immunizations may be administered to a person seven (7) years of age or older under a patient-specific order or prescription and subject to reporting of the administration to the prescribing physician.

(g) A general written protocol under subdivisions (16)(A)(i)(c) and (e) of this section and patient-specific orders or prescriptions under subdivisions (16)(A)(i)(d) and (f) of this section shall be from a physician licensed by the Arkansas State Medical Board and practicing in Arkansas or within fifty (50) miles of the Arkansas border;

(ii) Placing, packing, pouring, or putting into a container for dispensing, sale, distribution, transfer of, possession of, vending, or bartering any drug, medicine, poison, or chemical that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription of a practitioner authorized by law to prescribe drugs, medicines, poisons, or chemicals;

(iii) Placing in or affixing upon any container described in subdivision (16)(A)(ii) of this section a label required to be placed upon drugs, medicines, poisons, or chemicals sold or dispensed upon prescription of a practitioner authorized by law to prescribe those drugs, medicines, poisons, or chemicals;

(iv) Preparing, typing, or writing labels to be placed in or affixed on any container described in subdivision (16)(A)(ii) of this section, which label is required to be placed upon drugs, medicines, poisons, or chemicals sold or dispensed upon prescription of a practitioner authorized by law to prescribe those drugs, medicines, poisons, or chemicals;

(v) Interpreting prescriptions for drugs, medicines, poisons, or chemicals issued by practitioners authorized by law to prescribe drugs, medicines, poisons, or chemicals that may be sold or dispensed only on prescription;

(vi) Selecting, taking from, and replacing upon shelves in the prescription department of a pharmacy or apothecary drugs, medi-

cines, chemicals, or poisons that are required by the laws of the United States or the State of Arkansas to be sold or dispensed only on prescription of a practitioner authorized by law to prescribe them;

(vii) Compounding, mixing, preparing, or combining drugs, medicines, chemicals, or poisons that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription of a practitioner authorized by law to prescribe them;

(viii) Advising and providing information concerning utilization of drugs and devices and participation in drug utilization reviews;

(ix)(a) Performing a specific act of drug therapy management or disease state management delegated to a pharmacist for an individual patient based upon a written protocol or a patient care plan approved by a physician, who shall be licensed in this state under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(b) Drug therapy management shall not include the selection of drug products not prescribed by the physician unless the drug products are either named in the physician-initiated protocol or the physician-approved patient care plan;

(x) Providing pharmacy care; and

(xi) Providing pharmacokinetic services.

(B) The provisions of subdivisions (16)(A) and (16)(C) of this section shall not apply to employees of wholesale drug companies or other drug distributors who do not fill prescriptions or sell or dispense drugs to the consumer.

(C)(i) The Arkansas State Board of Pharmacy may permit pharmacy technicians other than pharmacists or interns to perform some or all of those functions described in board regulations under the direct, personal supervision of a licensed pharmacist pursuant to regulations defining the minimum qualifications of such employees, the ratio of pharmacy technicians to supervising pharmacists, and the scope of the duties, practices, and procedures that the Arkansas State Board of Pharmacy determines will promote the delivery of competent, professional pharmaceutical services and promote the public health and welfare. Nothing in this chapter shall be construed as allowing pharmacy technicians to administer medications.

(ii) The conduct of a pharmacy technician is the responsibility of the pharmacist-in-charge and supervising pharmacist of the pharmacy who shall not permit the employee to perform any act, task, or function that involves the exercise of independent judgment by the employee.

(iii) Pharmacy products prepared by pharmacy technicians shall be verified for accuracy by the supervising pharmacist prior to release for patient use, and the verification shall be documented.

(iv) The use of pharmacy technicians in a manner not authorized by this chapter or regulations promulgated hereunder shall be unprofessional conduct by the pharmacist-in-charge and the supervising pharmacist.

(v) It is recognized that hospital pharmacy technicians as defined in § 17-92-602(5) are governed by the Hospital Pharmacies Act, § 17-92-601 et seq., and related Arkansas State Board of Pharmacy regulations developed pursuant to that act;

(17) "Prescription" means an order for medicine or medicines usually written as a formula by a physician, optometrist, dentist, veterinarian, or other licensed medicinal practitioner. It contains the names and quantities of the desired substance, with instructions to the pharmacist for its preparation and to the patient for the use of the medicine at a particular time;

(18) "Proprietary medicines", when not otherwise limited, means remedies that a certain individual or individuals have the exclusive right to manufacture or sell;

(19) "Supervision" means under the direct charge or direction of and does not contemplate any continued absence of such supervision;

(20) "Therapeutically equivalent" means pharmaceutically equivalent drug products that if administered in the same amounts will provide the same therapeutic effect, identical in duration and intensity;

(21) "Veterinarian" means a practitioner of veterinary medicine duly licensed under the laws of this or some other state; and

(22) "Written protocol" means a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by regulation of the Arkansas State Medical Board under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 1929, No. 72, § 1; Pope's Dig., § 4624; Acts 1955, No. 57, preliminary section; 1971, No. 26, §§ 1, 3; 1983, No. 511, §§ 2, 13; 1985, No. 616, § 2; A.S.A. 1947, §§ 72-1001, 72-1001.1, 72-1044, 72-1046; Acts 1987, No. 101, § 3; 1991, No. 740, § 1; 1997, No. 437, §§ 1, 2; 1997, No. 1204, §§ 1, 2; 1999, No. 105, §§ 1-5; 2001, No. 801, § 1; 2001, No. 910, § 1; 2003, No. 1473, § 34; 2009, No. 355, § 1; 2011, No. 147, § 1.

Amendments. The 2011 amendment rewrote (16)(A)(i)(c); inserted (16)(A)(i)(d) through (g); and deleted (22)(B).

17-92-108. Fees.

(a) The fees charged by the Arkansas State Board of Pharmacy for the various examinations, permits, licenses, certificates, credentials, and books issued by the board shall be as follows:

(1) The fee for examination for a license as a licensed pharmacist upon examination shall not exceed twenty-five dollars (\$25.00) plus the actual cost of the examination;

(2) The fee for a license as a licensed pharmacist from another state by reciprocity and without examination shall not exceed two hundred dollars (\$200);

(3)(A) The fee for the initial license as a licensed pharmacist shall not exceed seventy-five dollars (\$75.00).

(B) The fee for the renewal of a license as a licensed pharmacist shall not exceed seventy-five dollars (\$75.00) per year;

(4)(A)(i) The fee for issuance of a pharmacy permit for the first time to operate an in-state pharmacy shall not exceed three hundred dollars (\$300).

(ii) The fee for renewal of a permit to operate an in-state pharmacy shall not exceed one hundred fifty dollars (\$150) per year.

(iii) When there is a change in ownership in an in-state pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150).

(B)(i) The fee for issuance of a permit for the first time to operate a specialty pharmacy shall not exceed three hundred dollars (\$300).

(ii) The fee for renewal of a permit to operate a specialty pharmacy shall not exceed one hundred fifty dollars (\$150) per year.

(iii) When there is a change in ownership in a specialty pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150).

(C)(i) The fee for issuance of a permit for the first time to operate an out-of-state pharmacy shall not exceed three hundred dollars (\$300).

(ii) The fee for renewal of a permit to operate an out-of-state pharmacy shall not exceed one hundred fifty dollars (\$150) per year.

(iii) When there is a change in ownership in an out-of-state pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150);

(5) The fee for a certificate as a licensed pharmacist shall not exceed ten dollars (\$10.00);

(6) The fee for certifying grades in connection with an application for reciprocity licensure without an examination shall not exceed ten dollars (\$10.00);

(7)(A) The fee for issuance of a hospital pharmaceutical service permit shall not exceed three hundred dollars (\$300), and the fee for the renewal of a hospital pharmaceutical service permit shall not exceed one hundred fifty dollars (\$150) per year.

(B) When there is a change in ownership of a hospital pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150).

(C)(i) The fee for issuance of an ambulatory care center pharmaceutical service permit shall not exceed three hundred dollars (\$300), and the fee for the renewal of an ambulatory care center pharmaceutical service permit shall not exceed one hundred fifty dollars (\$150) per year.

(ii) When there is a change in ownership of an ambulatory care center pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150);

(8)(A) The fee for issuance of an institutional pharmaceutical services permit shall not exceed thirty-five dollars (\$35.00).

(B) The fee for the annual renewal of an institutional pharmaceutical services permit shall not exceed thirty-five dollars (\$35.00);

(9)(A) The fee for issuance of and the reinstatement of a nursing home consultant pharmacist permit shall not exceed thirty-five dollars (\$35.00).

(B) The fee for the renewal of a nursing home consultant pharmacist permit shall not exceed thirty-five dollars (\$35.00) per year;

(10)(A) The fee for intern registration shall not exceed forty-five dollars (\$45.00).

(B) The fee for preceptor registration shall not exceed twenty dollars (\$20.00) every two (2) years;

(11) The fee for a change of pharmacist in charge of a pharmacy or other facility as described at § 17-92-403 shall not exceed thirty-five dollars (\$35.00);

(12) The fee for reinstatement of a pharmacist licensure shall not exceed seventy-five dollars (\$75.00) for each delinquent year up to a maximum of three hundred dollars (\$300);

(13) The fee for the Arkansas State Board of Pharmacy law book shall not exceed twenty-five dollars (\$25.00) except to interns on initial licensure and applicants for reciprocity on a one-time basis. A copy of each edition as revised shall be provided free to each pharmacy permit holder;

(14) The fee for a change of location inspection shall not exceed one hundred dollars (\$100);

(15) The penalty for late payment of renewal of any permit, license, registration, or certificate shall not exceed twenty dollars (\$20.00) per month beginning the first day of the second month after expiration, provided that if the renewal is not paid by the first day of the fourth month after expiration, the license shall be void;

(16)(A) The fee for issuance of a wholesale distributor of legend drugs and controlled substances permit shall not exceed three hundred dollars (\$300), and the renewal fee shall not exceed one hundred fifty dollars (\$150) per year.

(B) When there is a change in ownership of a wholesale distributor of legend drugs and controlled substances, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150);

(17)(A) The fee for the original issuance of a pharmacy technician's permit shall not exceed thirty-five dollars (\$35.00).

(B) The fee for the renewal of a pharmacy technician's permit shall not exceed thirty-five dollars (\$35.00) per year.

(C) The board may waive the fees under subdivisions (a)(17)(A) and (B) of this section if the pharmacy technician performs pharmacy technician duties as a volunteer in a charitable clinic;

(18)(A) The reinstatement fee for a pharmacy technician's permit shall not exceed forty dollars (\$40.00).

(B) The board may waive the fee under subdivision (a)(18)(A) of this section if the pharmacy technician performs pharmacy technician duties as a volunteer in a charitable clinic; and

(19)(A) The application fee for a license to sell, rent, offer to sell, or rent directly to patients in this state any home medical equipment,

legend drugs, or medical gases shall not exceed two hundred fifty dollars (\$250).

(B) The license renewal fee shall not exceed one hundred twenty-five dollars (\$125).

(C) The change-of-ownership fee shall not exceed one hundred twenty-five dollars (\$125).

(b) All fees for examination for a license shall be payable with the application and shall not be subject to refund.

(c) Should any license, certificate, or registration not be renewed within ninety (90) days after expiration thereof, it may be reinstated by the board as authorized in this section upon payment of the renewal fee and reinstatement fee. However, the following are not subject to reinstatement if not renewed within ninety (90) days after expiration:

- (1) Pharmacy permits;
- (2) Out-of-state pharmacy permits;
- (3) Speciality pharmacy permits;
- (4) Hospital permits;
- (5) Ambulatory care center pharmacy permits;
- (6) Wholesale distributors of legend drugs or controlled substance permits, or both; and
- (7) Suppliers of medical equipment, legend devices, and medical gas licenses.

(d)(1) All retail pharmacy permits, out-of-state pharmacy permits, specialty pharmacy permits, and pharmacist licenses shall be renewed every two (2) years beginning with renewals for 2002-2003.

(2) All pharmacy technician permits, hospital pharmacy permits, ambulatory care center pharmaceutical services permits, wholesale distributors of legend or controlled substance permits, wholesale distributors of medical equipment, legend devices, and medical gases permits, institutional pharmaceutical services permits, and any other permit, license, registration, or certificate issued by the board and not covered in subdivision (d)(1) of this section other than internship licenses and preceptor permits shall be renewed every two (2) years.

(3) The fee for any biennial renewal term will be the amount of two (2) annual renewal fees for the applicable license, permit, registration, or certification as provided in subsection (a) of this section.

(4) If the initial licensure, permit, certificate, or registration occurs in the first year of a biennial renewal term, the applicant shall pay the appropriate initial fee and the applicable annual fee for the license, permit, certificate, or registration for the second year in the renewal term as provided in subsection (a) of this section.

(5) If the initial licensure, permit, certificate, or registration occurs in the second year of a biennial renewal term, the applicant will pay only the original fee and will not be responsible for the renewal fee until the biennial renewal period for the license, permit, certificate, or registration.

History. Acts 1965, No. 480, §§ 1, 2; 1975, No. 597, § 1; 1979, No. 751, § 1; 1983, No. 511, § 10; 1985, No. 616, § 3; A.S.A. 1947, §§ 72-1042, 72-1043; Acts 1991, No. 740, § 3; 1997, No. 1029, § 1; 1999, No. 105, § 6; 2001, No. 910, § 2; 2005, No. 388, § 1; 2007, No. 435, § 1; 2009, No. 355, § 2; 2011, No. 597, § 1.

Amendments. The 2011 amendment, in (d)(2), deleted “nursing home consultant pharmacist permits” following the second occurrence of “services permits,” “will be renewed for one (1) year for the 2002 renewal and” following “preceptor permits,” and “beginning with renewals for 2003-2004” at the end.

17-92-113. Preservation of professional responsibilities of pharmacist — Prohibitions.

(a) As used in this section:

(1) “Exercise of professional responsibilities” includes without limitation a pharmacist’s or pharmacy’s:

(A) Discussing any aspect of a patient’s medical condition, treatment alternatives, or plan options with the patient;

(B) In good faith communicating with or advocating on behalf of a patient concerning the patient’s needs; or

(C) Asserting rights under:

(i) The contract with the pharmacy benefits manager; or

(ii) State or federal law; and

(2) “Pharmacy benefits manager” means a nongovernmental entity that administers or manages a pharmacy benefits plan or program.

(b) A pharmacy benefits manager shall not interfere with the exercise of professional responsibilities to a patient by a pharmacist or a pharmacy.

History. Acts 2011, No. 1007, § 1.

17-92-114. Reciprocity.

The Arkansas State Board of Pharmacy may adopt rules applicable to a pharmacy or a pharmacist licensed in another state that renders services in Arkansas that mirror qualifications, requirements, prerogatives, prohibitions, and limitations imposed by the other state on Arkansas pharmacies and pharmacists rendering services in the other state.

History. Acts 2011, No. 1019, § 1.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF PHARMACY

SECTION.

17-92-201. Members — Qualifications.

17-92-201. Members — Qualifications.

(a) The Arkansas State Board of Pharmacy shall consist of eight (8) members, appointed by the Governor for terms of six (6) years:

(1) Five (5) members shall be experienced pharmacists who have been actively engaged in the practice of pharmacy for the last five (5)

years immediately preceding their appointments, to be appointed upon the advice and recommendation of the Arkansas Pharmacists Association;

(2) One (1) member shall be a minority who is a licensed practicing pharmacist in this state, to be appointed by the Governor upon the advice and recommendation of the Pharmaceutical Section of the Arkansas Medical, Dental, and Pharmaceutical Association; and

(3)(A) Two (2) members of the board shall not be actively engaged in or retired from the practice of pharmacy. One (1) member shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly. Both shall be appointed from the state at large, subject to confirmation by the Senate. Both shall be full voting members but shall not participate in the grading of examinations.

(B) The two (2) positions shall not be held by the same person.

(b) A member shall hold his or her office until his or her successor shall have been appointed and qualified.

(c)(1) In case of a vacancy from death or other cause, the Governor shall appoint a successor with qualifications as set forth in subsection (a) of this section.

(2) In the event that a vacancy exists in the minority position due to death, resignation, or other cause, a successor member to the position shall be appointed by the Governor for the remainder of the unexpired portion of the term in the same manner as is provided for the initial appointment.

(d) In order to appropriately stagger the terms of the pharmacist members, the term of the minority pharmacist member serving on January 1, 1999, is extended to eight (8) years. Thereafter, the term of the minority pharmacist member shall be six (6) years.

History. Acts 1891, No. 50, § 2, p. 80; C. & M. Dig., § 3668; Pope's Dig., § 4604; Acts 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-1002; Acts 1991, No. 1163, § 1; 1997, No. 942, § 1; 1999, No. 105, § 7; 2011, No. 839, § 1.

Amendments. The 2011 amendment, in (a)(1), substituted "practice of pharmacy" for "drug business" and added "to be appointed upon the advice and recommendation of the Arkansas Pharmacists Association"; and substituted "may" for "shall" in (a)(3)(B).

SUBCHAPTER 3 — LICENSED PHARMACISTS

SECTION.

17-92-310. Failure to renew.

17-92-311. Revocation, suspension, or nonrenewal — Grounds.

SECTION.

17-92-313. Revocation — Procedure.

17-92-310. Failure to renew.

(a)(1)(A) All retail pharmacy permits, out-of-state pharmacy permits, specialty pharmacy permits, nursing home consultant pharma-

cist permits, and pharmacist licenses shall expire on December 31 of the first odd-numbered year following the date of issuance.

(B) All preceptor permits shall expire on December 31 of the first odd-numbered year following the date of issuance.

(C)(i)(a) Intern licenses issued to foreign graduates shall expire on December 31 of the second calendar year following the date of issuance.

(b) However, an intern license issued to a foreign graduate shall expire when the intern is issued a pharmacist license.

(ii)(a) An intern license issued to a student intern shall remain valid as long as the intern maintains active student status in a college of pharmacy approved by the Arkansas State Board of Pharmacy and for six (6) months following graduation.

(b) An intern license issued to a student intern shall expire six (6) months following graduation.

(c) An intern license issued to a student intern may be reinstated if the intern resumes active student status in a board-approved college of pharmacy and applies for reinstatement.

(d) An intern license issued to a student intern shall expire when the intern is issued a pharmacist license.

(D) All pharmacy technician permits, hospital pharmacy permits, ambulatory care center pharmaceutical services permits, wholesale distributors of legend or controlled substance permits, wholesale distributors of medical equipment, legend devices, and medical gases permits, institutional pharmaceutical services permits, List I chemical permits, and any other permit, license, registration, or certificate issued by the board and not covered in subdivisions (a)(1)(A)-(C) of this section shall expire on December 31 of the first even-numbered year following the date of the issuance of the permit, license, registration, or certificate.

(2) Every license, permit, registration, and certificate not renewed within ninety (90) days after expiration thereof shall be void.

(b) The penalty for late payment of renewal for pharmacists, pharmacies, wholesaler/manufacturer of legend drugs and controlled substances, hospital, institutional, and nursing home consultant permits shall be as listed in § 17-92-108, and if renewal remains unpaid on April 1 of any year, the license shall be void.

(c) If a pharmacist's license is not renewed by April 1, the fee for reinstatement shall be as stated in § 17-92-108.

(d) If a pharmacist's license has not been renewed for more than two (2) years, the board shall evaluate the former pharmacist to determine his or her continued ability to practice pharmacy safely with regard to the public health and safety, and the board shall establish conditions for the safe reentry into practice of the profession.

History. Acts 1955, No. 57, § 4; 1965, No. 480, § 1; 1975, No. 597, § 1; 1979, No. 751, § 1; 1985, No. 616, § 3; A.S.A. 1947, §§ 72-1010.1, 72-1042; Acts 1991, No. 740, § 11; 1997, No. 1029, § 4; 2005, No. 388, § 3; 2011, No. 597, § 2.

Amendments. The 2011 amendment inserted "nursing home consultant phar-

macist permits" in (a)(1)(A); substituted "December 31 of the first odd-numbered year" for "May 31 of the second calendar year" in (a)(1)(B); and deleted "nursing home consultant pharmacist permits" following "chemical permits" in (a)(1)(D).

17-92-311. Revocation, suspension, or nonrenewal — Grounds.

(a) The Arkansas State Board of Pharmacy may revoke or suspend an existing certificate of licensure, license, registration, or permit or may refuse to issue a certificate of licensure, license, registration, or permit if the holder or applicant, as the case may be, has committed or is found guilty by the board of any of the following acts or offenses set forth:

(1) The person is guilty of fraud, deceit, or misrepresentation in the practice of pharmacy;

(2) The person is unfit or incompetent to practice pharmacy by reason of negligent performance of his or her duties;

(3) The person has been found guilty or pleaded guilty or nolo contendere in a criminal proceeding, regardless of whether or not the adjudication of guilt or sentence is withheld by a court of this state, another state, or the federal government for:

(A) Any felony;

(B) Any act involving moral turpitude, gross immorality, or which is related to the qualifications, functions, and duties of a licensee; or

(C) Any violation of the pharmacy or drug laws or rules of this state, or of the pharmacy or drug statutes, rules, and regulations of any other state or of the federal government;

(4) The person has become physically or mentally incompetent to practice pharmacy to such an extent as to endanger the public;

(5) The person has directly or indirectly aided or abetted the practice of pharmacy by a person not authorized to practice pharmacy by the board;

(6) The person has been guilty of fraud or misrepresentation in obtaining a license to practice pharmacy in the State of Arkansas as a licensed pharmacist;

(7) The person has been guilty of gross unprofessional or dishonorable conduct;

(8) The person has willfully violated any of the provisions of the pharmacy laws of the State of Arkansas;

(9) The person is addicted to the use of intoxicating liquors or drugs to such a degree as to render him or her unfit, in the opinion of the board, to manufacture, compound, sell, or dispense drugs or medicine;

(10) The person knowingly adulterated or caused to be adulterated any drugs, chemical, or medical preparations and offered those preparations for sale; or

(11) The person had his or her certificate of licensure, license, registration, or permit revoked, suspended, or had other disciplinary action taken, or had his or her application for a certificate of licensure, license, registration, or permit refused, revoked, or suspended, or had voluntarily or otherwise surrendered his or her certificate of licensure,

license, registration, or permit after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state.

(b) Nothing in this section should be construed as affecting the rights of any person to appeal any order of the board as now provided by the state pharmacy laws.

History. Acts 1963, No. 245, §§ 1, 2; A.S.A. 1947, §§ 72-1040, 72-1041; Acts 1991, No. 740, § 12; 2011, No. 597, § 3.

Amendments. The 2011 amendment, in (a), inserted “or suspend,” substituted “certificate of licensure, license, registration, or permit” for “license of a licensed pharmacist or may suspend the license or” and substituted “certificate of licensure, license, registration, or permit” for “li-

cense”; in (a)(3)(C), inserted “or rules” and deleted “or rules and regulations pertaining thereto” following “this state”; rewrote (a)(4); in (a)(11), substituted “certificate of licensure, license, registration, or permit” for “license to practice pharmacy” and “certificate of licensure, license, registration, or permit” for “license” twice; and made minor stylistic changes.

17-92-313. Revocation — Procedure.

(a)(1) Before revoking a certificate of licensure, license, registration, or permit, the Arkansas State Board of Pharmacy shall give the person ten (10) days’ notice in writing to appear before the board, at the time and place as the board may direct, to show cause why his or her certificate should not be revoked.

(2) The notice shall be signed by the Executive Director of the Arkansas State Board of Pharmacy or the director’s designee and shall set forth in clear and concise language the nature of the charge against the person.

(3) Mailing a copy of the notice by registered mail, addressed to the person at his or her address appearing upon the records of the board concerning the issuance of his or her certificate or the last renewal thereof, shall be sufficient service of notice.

(b) At the hearing:

(1) The board shall have the power to subpoena witnesses;

(2) The executive director or the director’s designee shall sign subpoenas;

(3) The President of the Arkansas State Board of Pharmacy shall have the power to administer oaths; and

(4) The board shall hear evidence.

(c) If the board finds after a hearing that the certificate of licensure, license, registration, or permit should be revoked, it shall be done immediately.

History. Acts 1939, No. 120, § 2; A.S.A. 1947, § 72-1028; Acts 1999, No. 105, §§ 8, 9; 2011, No. 597, §§ 4, 5.

Amendments. The 2011 amendment substituted “a certificate of licensure, license, registration, or permit” for “license

of any licensed pharmacist” in (a)(1); substituted “of licensure, license, registration, or permit” for “or license of the person” in (c); and made minor stylistic changes throughout.

SUBCHAPTER 4 — PHARMACIES

SECTION.

17-92-412. Nursing home consultant permit.

17-92-412. Nursing home consultant permit.

(a)(1) The Arkansas State Board of Pharmacy shall provide for the issuance of nursing home consultant permits by regulation.

(2) The consultant pharmacist-in-charge and the nursing home administrator shall be jointly responsible to ensure that a valid permit is posted at the facility at all times.

(b) The board shall set by regulation the standards by which the controlled and legend drugs and devices will be maintained in the nursing home or long-term care facility.

(c) The consultant pharmacist-in-charge, in conjunction with the nursing home administrator and director of nurses, shall ensure the proper control and accountability, storage, and proper utilization of drugs and other legend devices dispensed to patients residing in the facility according to board standards as well as those established by state and federal guidelines.

History. Acts 2001, No. 910, § 11; in (a)(1), deleted “by regulation” following 2009, No. 355, § 6; 2011, No. 859, § 10. “shall provide” and added “by regulation”

Amendments. The 2011 amendment, following “permits.”

SUBCHAPTER 12 — ARKANSAS PHARMACY AUDIT BILL OF RIGHTS

SECTION.

17-92-1201. Arkansas Pharmacy Audit Bill of Rights.

17-92-1201. Arkansas Pharmacy Audit Bill of Rights.

(a) This subchapter shall be known and may be cited as the “Arkansas Pharmacy Audit Bill of Rights”.

(b) Notwithstanding any other law, when an audit of the records of a pharmacy is conducted by a managed-care company, an insurance company, a third-party payor, or any entity that represents responsible parties such as companies or groups, the audit shall be conducted in accordance with the following bill of rights:

(1) The entity conducting the initial on-site audit shall give the pharmacy notice at least one (1) week before conducting the initial on-site audit for each audit cycle;

(2) Any audit that involves clinical or professional judgment shall be conducted by or in consultation with a pharmacist;

(3)(A)(i) Any clerical or recordkeeping error, such as a typographical error, scrivener’s error, or computer error, regarding a required document or record shall not in and of itself constitute fraud.

(ii) However, a claim arising under subdivision (b)(3)(A)(i) of this section may be subject to recoupment.

(B) A claim arising under subdivision (b)(3)(A)(i) of this section is not subject to criminal penalties without proof of intent to commit fraud;

(4) A pharmacy may use the records of a hospital, physician, or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug;

(5)(A) A finding of an overpayment or underpayment may be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs.

(B) However, recoupment of claims under subdivision (b)(5)(A) of this section shall be based on the actual overpayment unless the projection for overpayment or underpayment is part of a settlement by the pharmacy;

(6)(A) Where an audit is for a specifically identified problem that has been disclosed to the pharmacy, the audit shall be limited to claims that are identified by prescription number.

(B) For an audit other than described in subdivision (b)(6)(A) of this section, an audit shall be limited to twenty-five (25) prescriptions that have been randomly selected.

(C) If an audit reveals the necessity for a review of additional claims, the audit shall be conducted on site.

(D) Except for audits initiated under subdivision (b)(6)(A) of this section, an entity shall not initiate an audit of a pharmacy more than two (2) times in a calendar year;

(7)(A) A recoupment shall not be based on:

(i) Documentation requirements in addition to or exceeding requirements for creating or maintaining documentation prescribed by the Arkansas State Board of Pharmacy; or

(ii)(a) A requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the Arkansas State Board of Pharmacy.

(b) This subdivision (b)(7) applies only to audits of claims submitted for payment on or after January 1, 2012.

(B) Subdivisions (b)(7)(A)(i) and (ii) do not apply in cases of Food and Drug Administration regulation or drug manufacturer safety programs;

(8) Recoupment shall only occur following the correction of a claim and shall be limited to amounts paid in excess of amounts payable under the corrected claim;

(9) Except for Medicare claims, approval of drug, prescriber, or patient eligibility upon adjudication of a claim shall not be reversed unless the pharmacy or pharmacist obtained the adjudication by fraud or misrepresentation of claim elements;

(10) Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;

(11) A pharmacy shall be allowed at least thirty (30) days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit;

(12) The period covered by an audit shall not exceed twenty-four (24) months from the date the claim was submitted to or adjudicated by a managed-care company, an insurance company, a third-party payor, or any entity that represents such companies or groups;

(13) Unless otherwise consented to by the pharmacy, an audit shall not be initiated or scheduled during the first seven (7) calendar days of any month due to the high volume of prescriptions filled during that time;

(14)(A) The preliminary audit report shall be delivered to the pharmacy within one hundred twenty (120) days after conclusion of the audit.

(B) A final audit report shall be delivered to the pharmacy within six (6) months after receipt of the preliminary audit report or the final appeal as provided for in subsection (c) of this section, whichever is later; and

(15) Notwithstanding any other provision in this subsection, the agency conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits.

(c) Recoupments of any disputed funds shall only occur after final internal disposition of the audit, including the appeals process as set forth in subsection (d) of this section.

(d)(1) Each entity conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity.

(2) If, following the appeal, the entity finds that an unfavorable audit report or any portion of the unfavorable audit report is unsubstantiated, the entity shall dismiss the audit report or the unsubstantiated portion of the audit report without any further proceedings.

(e) Each entity conducting an audit shall provide a copy of the final audit report to the plan sponsor after completion of any review process.

(f)(1) The full amount of any recoupment on an audit shall be refunded to the responsible party.

(2) Except as provided in subsection (f)(3) of this section, a charge or assessment for an audit shall not be based, directly or indirectly, on amounts recouped.

(3) Subsection (f)(2) does not prevent the entity conducting the audit from charging or assessing the responsible party, directly or indirectly, based on amounts recouped if both the following conditions are met:

(A) The responsible party and the entity have a contract that explicitly states the percentage charge or assessment to the responsible party; and

(B) A commission or other payment to an agent or employee of the entity conducting the audit is not based, directly or indirectly on amounts recouped.

(g) This section does not apply to any audit, review, or investigation that involves alleged fraud, willful misrepresentation, or abuse, including without limitation:

- (1) Medicaid fraud as defined in § 5-55-111;
- (2) Abuse or fraud as defined in § 20-77-1702; or
- (3) Insurance fraud.

History. Acts 2007, No. 843, § 1; 2011, No. 517, §§ 1, 2.

Amendments. The 2011 amendment inserted "responsible parties" in (b); inserted present (b)(6) through (9) and re-

designated the remaining subdivisions accordingly; deleted former (b)(11)(A); added present (f); and redesignated former (f) as (g).

CHAPTER 93

PHYSICAL THERAPISTS

SUBCHAPTER.

2. ARKANSAS STATE BOARD OF PHYSICAL THERAPY.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF PHYSICAL THERAPY

SECTION.

17-93-203. Disposition of funds.

17-93-203. Disposition of funds.

(a)(1) All fees and other moneys received by the Arkansas State Board of Physical Therapy under this chapter shall be deposited into a financial institution in this state and expended solely for the purposes of this chapter.

(2) No part of these funds shall revert to the general funds of this state.

(b)(1) The compensation provided by this chapter and all expenses incurred under this chapter shall be paid from these funds.

(2) Compensation or expenses incurred under this chapter shall not be a charge against the general funds of this state.

(c) The board shall file an annual report of its activities with the Department of Finance and Administration, and the report shall include a statement of all receipts and disbursements.

History. Acts 1991, No. 1232, § 2; 2009, No. 1471, § 3; 2011, No. 859, § 11.

Amendments. The 2011 amendment,

in (b)(2), deleted "No compensation" at the beginning and inserted "not."

SUBCHAPTER 3 — LICENSING**17-93-301. License required — Exceptions.****CASE NOTES****Preservation for Review.**

Insurer's claim that the trial court gave two binding instructions to the jury that in effect directed the jury to rule in the insured's favor was improper because the insurer never presented arguments to the

trial court as to why Special Instruction No. 2 as a binding instruction and why this section should have been given to the jury. Thus, the argument was not preserved on appeal. *Allstate Ins. Co. v. Dodson*, 2011 Ark. 19, — S.W.3d — (2011).

CHAPTER 95**PHYSICIANS AND SURGEONS****SUBCHAPTER**

1. GENERAL PROVISIONS.
3. ARKANSAS MEDICAL PRACTICES ACT — ARKANSAS STATE MEDICAL BOARD.
8. PHYSICIAN ASSISTANT COMMITTEE.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

17-95-107. Credentialing organization.

17-95-107. Credentialing organization.

(a) The purpose of this section is to allow the Arkansas State Medical Board to provide information to credentialing organizations.

(b) As used in this section:

(1) "Accrediting organization" means an organization that awards accreditation or certification to hospitals, managed care organizations, or other health care organizations, including, but not limited to, the Joint Commission on the Accreditation of Healthcare Organizations and the National Committee for Quality Assurance;

(2) "Board" means the Arkansas State Medical Board;

(3) "Credentialing information" means:

(A) Information regarding a physician's:

(i) Professional training, qualifications, background, practice history, and experience, for example, status of medical license;

(ii) Clinical hospital privileges;

(iii) Status of Drug Enforcement Administration certificate;

(iv) Education, training, and board certification;

(v) Work history;

(vi) Current malpractice coverage;

(vii) History of professional liability or malpractice claims;

(viii) Drug or alcohol abuse to the extent permitted by law;

(ix) History of board appearances;

(x) Loss, surrender, restriction, or suspension of license;

- (xi) Felony convictions;
 - (xii) History of loss or limitation of privileges or disciplinary activity;
 - (xiii) Attestation of the correctness and completeness of the application; and
 - (xiv) History of Medicare or Medicaid or other sanctions; and
- (B) Other objective information typically required by accrediting organizations for the purpose of credentialing physicians;
- (4) "Credentialing organization" means a hospital, clinic, or other health care organization, managed care organization, insurer, or health maintenance organization; and
- (5) "Primary source verification procedure" means the procedure used by a credentialing organization to test the accuracy of documents and credentialing information submitted to it by or about a physician who is applying for affiliation or participation with the credentialing organization. This procedure involves the verification of credentials with the originating source of the credentials.
- (c)(1) All physicians licensed by the board shall submit such credentialing information as the board may request so that the board may verify the information by the primary source verification procedure in order to make the information available to credentialing organizations. If the physician should fail to submit the information as the board requests within a period of thirty (30) days, the failure can result in the suspension of the physician's license to practice medicine in the State of Arkansas after the matter is presented to the full board for a hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
- (2) Any credentialing organization shall submit such credentialing information as it has in its possession to the board in order to complete the primary source verification procedure, upon the board's request and upon the board's providing proof that the physician has authorized the release of the information. The failure of the organization to release the information to the board shall be grounds to have the license to do business in the State of Arkansas suspended upon the board's presenting the proof to the licensing agency of that organization.
- (3) Credentialing organizations may utilize credentialing information provided by the board and verified by the primary source verification procedure of the board to evaluate the following:
- (A) Granting or denying the application of a physician for affiliation or participation within the organization or its networks;
 - (B) The quality of services provided by a physician or the physician's competency or qualifications;
 - (C) Renewal of the affiliation or participation of the physician; and
 - (D) The type, extent, or conditions of the physician's privileges or participation in the network.
- (d)(1)(A) The board shall provide to any credentialing organization any credentialing information the board collects concerning any person licensed by the board if the person authorizes release of the information.

(B) The board shall provide the information within fifteen (15) business days after receipt of the request.

(C) If any person fails or refuses for any reason to authorize release of credentialing information, the requesting credentialing organization shall be entitled on grounds of the refusal to exclude the person from any privileges, contract, or network of the credentialing organization.

(2)(A) The board shall promulgate regulations establishing a credentialing information system, and the regulations shall indicate the procedures for collection and release of credentialing information under this section.

(B) The regulations shall require that before July 1, 2003, the process of recredentialing a physician shall be completed within thirty (30) business days unless circumstances beyond the control of the board make completion of the process within thirty (30) business days impossible or unduly burdensome.

(C) If the credentialing process is not completed within the required time and the board does not provide an adequate explanation for failing to meet the time requirement, the fee for the credentialing process shall be refunded to the credentialing organization, hospital, or other qualified recipient of the fee.

(D) If disagreements arise over a claim that circumstances have made timely completion impossible or unduly burdensome, the disagreement shall be presented to the advisory committee established under subdivision (d)(3) of this section for a recommendation to the board on whether or not to refund the fee and in what amount so that the board may issue an order to refund the fee or deny the request after consideration by the board.

(3) The board shall appoint a ten-member advisory committee to assist with the adoption of policies and regulations concerning the credentialing information system. At least six (6) of the ten (10) members of the advisory committee shall be representative of credentialing organizations subject to this section, including not fewer than two (2) hospital representatives and not fewer than two (2) insurer or health maintenance organization representatives.

(4) Credentialing information shall not be disclosed to any parties other than the applicable health care provider and the credentialing organization and its designated credentialing and appeals, peer review, and quality improvement committees or bodies. Except as permitted in this section, credentialing information shall not be used for any purpose other than review by the board and credentialing organizations of the professional background, competency, qualifications, and credentials or renewal of credentials of a health care provider or appeals therefrom, and all such credentialing information shall be exempt from disclosure under the provisions of the Freedom of Information Act of 1967, § 25-19-101 et seq. Credentialing information may be disclosed in the following circumstances:

(A) By the board in disciplinary hearings before the board or in any trial or appeal of the board action or order;

(B) By the board or credentialing organization to any licensing, regulatory, or disciplinary authorities or agencies of the United States or of other states or jurisdictions; and

(C) In any legal or regulatory proceeding that:

(i) Is brought by a:

(a) Health care provider;

(b) Representative of the health care provider or a class thereof;

(c) Local, state, or federal agency or authority; or

(d) Patient or group or class of patients or their authorized representatives or agents; and

(ii) Challenges the actions, omissions, or conduct of the credentialing organization with respect to credentialing of any health care provider or the grant or denial of any affiliation or participation of the health care provider with or in the credentialing organization or any network thereof; or

(D) By any party when authorized to do so by the health care provider to whom the credentialing information relates.

(5) The evaluation and discussion of credentialing information by a credentialing organization shall not be subject to discovery or admissible pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq.

(6) The board may enter into contractual agreements with users of the credentialing information system to define the type and form of information to be provided and to give users assurances of the integrity of the information collected.

(7)(A) The board may charge credentialing organizations a reasonable fee for the use of the credentialing service as established by rule and regulation.

(B) The fee shall be set in consultation with the advisory committee and shall be set at such a rate as will reimburse the board, when added to the credentialing assessments collected from physicians, for the cost of maintaining the credentialing information system.

(C) The board's costs may not exceed the fees charged by private vendors with a comparable statewide credentialing service.

(D) The board may assess each physician licensee an amount not to exceed one hundred dollars (\$100) per year to offset the cost of providing the credentialing service.

(e)(1)(A) In lieu of testing credentialing information by its own primary source verification procedure, a credentialing organization may rely upon credentialing information from the board if the board certifies that the information provided by the board has been tested by the board's primary source verification procedure.

(B) The credentialing organization shall be immune from civil suit based on any allegation of wrongdoing or negligence involved in the collection and verification of or reliance upon credentialing information on a health care provider if the credentialing organization has utilized the information provided by the board in credentialing a health care provider for affiliation or participation with the creden-

tialing organization. However, this does not convey immunity from civil suit to a credentialing organization for any credentialing decision it makes.

(2) Subject only to the exceptions recognized in subdivisions (f)(1) and (2) of this section, a credentialing organization shall be precluded hereby from seeking credentialing information from the physician or from sources other than the board if:

(A) The same credentialing information is available from the board; and

(B) At the time the credentialing information is requested, the board:

(i) Holds certification by the National Committee for Quality Assurance as a certified credentials verification organization;

(ii) Demonstrates compliance with the principles for credentials verification organizations set forth by the Joint Commission on the Accreditation of Healthcare Organizations;

(iii) Documents compliance with Department of Health rules and regulations applicable to credentialing; and

(iv) Maintains evidence of compliance with the standards referenced in subdivisions (e)(2)(B)(i)-(iii) of this section; and

(C) The board charges fees that comply with subdivision (d)(7) of this section. Until such time as the board satisfies each of the foregoing prerequisites, credentialing organizations, in their discretion, may utilize credentialing information obtained from the board, or they may seek other sources for the same credentialing information. If at any time the board fails to satisfy any of the certification or compliance standards referenced in this subsection, no credentialing organization shall be required to utilize the board to obtain credentialing information during any period in which the board lacks such accreditation or compliance.

(f)(1) Credentialing organizations that utilize the credentialing information system offered by the board shall not attempt to collect duplicate information from individual physicians or originating sources, but nothing in this section shall prevent any credentialing organization from collecting or inquiring about any data not available from or through the board, nor from reporting to or inquiring of the National Practitioner Data Bank.

(2) The board may seek an injunction against any credentialing organization violating or attempting to violate this section and, upon prevailing, shall be entitled to recover attorney's fees and court costs involved in obtaining the injunction.

(g) The board will have the authority to hire such employees and enter into contracts with attorneys, individuals, or corporations for services as may be necessary to bring about the purpose of this section.

(h) [Repealed.]

History. Acts 1999, No. 1410, § 2; **Amendments.** The 2011 amendment 2003, No. 1360, §§ 1-3; 2005, No. 1962, deleted (h).
§ 76; 2011, No. 999, § 1.

SUBCHAPTER 3 — ARKANSAS MEDICAL PRACTICES ACT — ARKANSAS STATE MEDICAL BOARD

SECTION.

17-95-303. Powers and duties.

17-95-303. Powers and duties.

The Arkansas State Medical Board shall:

(1) Make and adopt all rules, regulations, and bylaws not inconsistent with the laws of this state or of the United States and necessary or convenient to perform the duties and to transact the business required by law;

(2) Have authority to promulgate and put into effect such rules and regulations as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein;

(3)(A)(i) Have authority to employ attorneys to represent the board in all legal matters at a compensation approved by the board.

(ii) Contracts for employment of attorneys shall be filed by the Executive Secretary of the Arkansas State Medical Board with the Legislative Council.

(B) The board shall further have authority to request the assistance of the Attorney General and the prosecuting attorneys of Arkansas in such manner as it deems necessary and proper;

(4) Have the authority to employ an executive secretary to carry out the purposes and the mandates of the board and to supervise the other employees of the board;

(5) Have the authority to employ a medical director, who shall hold a valid license to practice medicine in this state, to evaluate medical issues and to assist in investigations pending before the board;

(6) Have the power and authority to employ such secretarial and administrative assistance as may be necessary to carry out the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the duties of the board to protect the people of the State of Arkansas;

(7) Have the power and authority to employ one (1) or more inspectors as may be necessary to carry out the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the duties of the board to protect the people of the State of Arkansas;

(8) Examine, as is provided for by law, all applicants for a license to practice medicine in this state;

(9) Consider and give deference to data, studies, consensus documents, and conclusions issued by the Centers for Disease Control and Prevention or the National Institutes of Health whenever their data,

studies, consensus documents, and conclusions are relevant to any decision made pursuant to the board's powers and duties under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.; and

(10) Have the power and authority to collect practice data from licensees.

History. Acts 1955, No. 65, § 2; 1957, No. 198, § 18; 1977, No. 15, § 4; 1979, No. 150, § 1; 1983, No. 365, § 5; A.S.A. 1947, §§ 72-602, 72-618; Acts 1992 (1st Ex. Sess.), No. 38, § 2; 2001, No. 464, § 4; 2003, No. 1716, § 1; 2011, No. 1010, § 1.

Amendments. The 2011 amendment added (10).

17-95-310. Medical Director of Arkansas State Medical Board — Qualifications.

A.C.R.C. Notes. Acts 2011, No. 1062, § 5, provided: “DIRECTOR QUALIFICATIONS AND LIMITATIONS. The Director of the State Medical Board shall:

“(a) have been in full-time clinical practice of medicine in direct patient care within one (1) year of filling the position of Medical Director;

“(b) have fifteen (15) years of current continuous full-time medical service immediately prior to the date of appointment which shall include, but not be limited to,

at least ten (10) years of full-time clinical practice in direct patient care, five (5) years of which shall have been in full-time clinical practice in direct patient care in the State of Arkansas;

“(c) have not served on the Arkansas State Medical Board within the past five (5) years; and

“(d) have a comprehensive knowledge of the contemporary, broad-based clinical practice of medicine with experience in direct patient care.”

SUBCHAPTER 8 — PHYSICIAN ASSISTANT COMMITTEE

SECTION.

17-95-801. Physician Assistant Committee — Members.

SECTION.

17-95-802. Duties of Physician Assistant Committee.

17-95-801. Physician Assistant Committee — Members.

(a)(1) The Physician Assistant Committee is created with the Arkansas State Medical Board.

(2) The committee shall consist of five (5) members as follows:

(A) Three (3) members who shall be members of the Arkansas State Medical Board; and

(B) Two (2) physician assistant members selected by the board from a list of physician assistants nominated by the Arkansas Academy of Physician Assistants.

(b)(1)(A) Committee members who are physician assistants shall serve three-year terms.

(B) Committee members who are physician assistants shall not serve more than two (2) consecutive terms.

(2) A physician assistant committee member shall serve until a successor is appointed by the board.

(3) If a vacancy occurs among the committee members who are physician assistants, the board shall appoint a new member from a list

of three (3) physician assistants nominated by the Arkansas Academy of Physician Assistants to fill the vacancy.

(c)(1) The committee shall elect a chair with powers and duties the committee shall fix.

(2) The chair shall serve a two-year term.

(3) A chair may be elected for no more than two (2) consecutive terms.

(d)(1) A quorum of the committee shall be three (3) members.

(2) The committee shall hold a meeting at least quarterly and at other times the committee considers advisable to review applications for licensure or renewal and for approval of the protocol between the physician assistant and the supervising physician.

(e)(1) The committee members who are physician assistants shall serve without remuneration.

(2) However, if funds are available, the committee members who are physician assistants may receive expense reimbursement and stipends in accordance with § 25-16-902, as follows:

(A) Their actual expenses while attending regular and special meetings of the committee; and

(B) A per diem allowance when in attendance at regular or special meetings of the committee.

(f) The members of the committee who are members of the board shall receive remuneration as now provided to members of the board.

History. Acts 2011, No. 1207, § 1.

17-95-802. Duties of Physician Assistant Committee.

The Physician Assistant Committee shall:

(1) Review all applications for physician assistants' licensure and for renewal of physician assistants' licensure;

(2) Review protocols between a physician assistant and a supervising physician;

(3) Recommend to the Arkansas State Medical Board approval or disapproval of applications submitted under subdivision (1) of this section and of protocols reviewed under subdivision (2) of this section; and

(4) Recommend the approval, disapproval, or modification of the application for prescriptive privileges for a physician assistant.

History. Acts 2011, No. 1207, § 1.

CHAPTER 97

PSYCHOLOGISTS AND PSYCHOLOGICAL EXAMINERS

SUBCHAPTER.

3. LICENSING.

SUBCHAPTER 3 — LICENSING**SECTION.**

17-97-312. Criminal background checks.

17-97-309. Fees.

A.C.R.C. Notes. Acts 2011, No. 1070, § 17, provided: “AUTISM TREATMENT AND COORDINATION. The Department of Human Services — Division of Developmental Disabilities Services shall promulgate rules and regulations regarding the licensure and oversight of Applied Behavior Analysts as described in Arkan-

sas Code § 23-99-418. The rules and regulations shall include a requirement for a licensure application fee equal to that charged to applicants to be licensed as a psychologist as described in Arkansas Code § 17-97-309. Proceeds from this fee are declared as cash funds.”

17-97-312. Criminal background checks.

(a) Each first-time applicant for a license issued by the Arkansas Psychology Board shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) Except as provided in subdivision (m)(1) of this section, no person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Negligent homicide as prohibited in § 5-10-105;
- (5) Kidnapping as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree as prohibited in § 5-11-103;
- (7) Permanent detention or restraint as prohibited in § 5-11-106;
- (8) Robbery as prohibited in § 5-12-102;

- (9) Aggravated robbery as prohibited in § 5-12-103;
 - (10) Battery in the first degree as prohibited in § 5-13-201;
 - (11) Aggravated assault as prohibited in § 5-13-204;
 - (12) Introduction of a controlled substance into the body of another person as prohibited in § 5-13-210;
 - (13) Terroristic threatening in the first degree as prohibited in § 5-13-301;
 - (14) Rape as prohibited in § 5-14-103;
 - (15) Sexual indecency with a child as prohibited in § 5-14-110;
 - (16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;
 - (17) Incest as prohibited in § 5-26-202;
 - (18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;
 - (19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;
 - (20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;
 - (21) Permitting abuse of a minor as prohibited in § 5-27-221;
 - (22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;
 - (23) Felony adult abuse as prohibited in § 5-28-103;
 - (24) Theft of property as prohibited in § 5-36-103;
 - (25) Theft by receiving as prohibited in § 5-36-106;
 - (26) Arson as prohibited in § 5-38-301;
 - (27) Burglary as prohibited in § 5-39-201;
 - (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 — 5-64-442;
 - (29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;
 - (30) Stalking as prohibited in § 5-71-229;
 - (31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;
 - (32) Computer child pornography as prohibited in § 5-27-603; and
 - (33) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.
- (g)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.
- (2) Except as provided in subdivision (m)(1) of this section, upon receipt of information from the Identification Bureau of the Department

of Arkansas State Police that the person holding a letter of provisional licensure has pleaded guilty or nolo contendere to or been found guilty of any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsection (f) and subdivision (g)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(i)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative or the person whose license is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the department.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(k) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than this background check.

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m)(1) For purposes of this section, an expunged record of a conviction or plea of guilty of or nolo contendere to an offense listed in subsection (f) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (m)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

(A) Capital murder as prohibited in § 5-10-101;

(B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(C) Kidnapping as prohibited in § 5-11-102;

(D) Rape as prohibited in § 5-14-103;

(E) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;

(F) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205 and endangering the welfare of a minor in the second degree as prohibited in § 5-27-206;

(G) Incest as prohibited in § 5-26-202;

(H) Arson as prohibited in § 5-38-301;

(I) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201; and

(J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

History. Acts 1997, No. 1317, § 12; 2003, No. 1087, § 16; 2003, No. 1385, § 1; 2003, No. 1482, § 18; 2005, No. 1923, § 3; 2011, No. 570, § 122.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: “Legislative intent. The intent of this act is to implement compre-

hensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs.”

Amendments. The 2011 amendment, in (f)(28), inserted “the former” and “and §§ 5-64-419 — 5-64-442.”

CHAPTER 100

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

SUBCHAPTER 2 — BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

17-100-202. Powers and duties.

A.C.R.C. Notes. Acts 2011, No. 297, § 4, provided: “INVESTIGATOR. The Board of Examiners in Speech-Language Pathology and Audiology shall contract with an outside investigator, as needed, to perform investigations and conduct inspections of alleged wrongdoing. The duties of the investigator hired shall include, but not be limited to, investigation and inspection of all complaints as determined

by the Board, to determine whether or not any persons have

“(1) Practiced their profession in such a way as to endanger the general health and welfare of the public; or

“(2) Otherwise violated the practice act or rules and regulations of the Speech-Language Pathology and Audiology Board.”

CHAPTER 101

VETERINARIANS AND ANIMAL TECHNICIANS

SUBCHAPTER.

3. LICENSING.

SUBCHAPTER 3 — LICENSING

SECTION.

17-101-307. License required — Exemptions.

SECTION.

17-101-315. Equine teeth floating and equine massage.

17-101-307. License required — Exemptions.

(a) No person may practice veterinary medicine in this state who is not a licensed veterinarian or the holder of a valid temporary permit issued by the Veterinary Medical Examining Board.

(b) This chapter shall not be construed to prohibit:

(1) Employees of the federal or state government or employees of local government who are certified by an agency approved by the board to perform euthanasia from performing their official duties;

(2) Regular students in a veterinary school or college from performing duties or actions assigned by the school or college or working under the direct personal supervision of a veterinarian licensed in the State of Arkansas;

(3) Reciprocal aid of neighbors in performing routine accepted livestock management practices without compensation;

(4) Any veterinarian licensed in any foreign jurisdiction from consulting with a licensed veterinarian;

(5) The owner of an animal, his or her consignees, and their employees from performing routine accepted livestock management practices in the care of animals belonging to the owner;

(6) A member of the faculty of a veterinary school from performing his or her regular functions or a person from lecturing or giving instruction or demonstration at a veterinary school or in connection with a continuing education course or seminar for licensed veterinarians or registered technicians;

(7) A person from engaging in bona fide scientific research that reasonably requires experimentation involving animals;

(8) Any person:

(A) Engaging in the art or profession of horseshoeing;

(B) Training, except that the training shall not include diagnosing, prescribing, or dispensing of any therapeutic agent;

(C) Selling medicines, feed, appliances, or other products used in the prevention or treatment of animal diseases as permitted by law, by any pharmacist, merchant, or manufacturer at his or her regular place of business;

(D) Collecting, preparing, or freezing semen; and

(E) Performing nonsurgical artificial insemination;

(9)(A) Any act, task, or function performed by a veterinary technician at the direction of and under the supervision of a licensed veterinarian, when:

(i) The technician is certified by and annually registered with the board as one qualified by training or experience to function as an assistant to a veterinarian;

(ii) The act, task, or function is performed at the direction of and under the supervision of a licensed veterinarian in accordance with rules promulgated by the board; and

(iii) The services of the veterinary technician are limited to assisting the veterinarian in the particular fields for which the assistant has been trained, certified, and registered.

(B) Subdivision (b)(9)(A) of this section shall not limit or prevent any veterinarian from delegating to a qualified person any acts, tasks, or functions which are otherwise permitted by law but which do not include diagnosis, prescribing medication, or surgery; or

(10) Any chiropractor licensed in this state and certified by the American Veterinary Chiropractic Association from performing chiropractic upon animals so long as the chiropractic is performed under the immediate supervision of an Arkansas-licensed veterinarian.

History. Acts 1975, No. 650, § 14; added present (b)(8); redesignated former A.S.A. 1947, § 72-1145; Acts 1993, No. (b)(8) and (b)(9) as present (b)(9) and 1198, § 1; 1995, No. 1348, § 5; 2001, No. (b)(10); and deleted “and regulations” following “rules” in present (b)(9)(A)(ii). 1741, § 6; 2011, No. 1031, § 1.

Amendments. The 2011 amendment

17-101-315. Equine teeth floating and equine massage.

(a) The Veterinary Medical Examining Board is prohibited from enforcing board policy regarding equine teeth floating and equine massage therapy by either investigating or prosecuting an individual practitioner engaged in equine teeth floating or an individual practitioner practicing equine massage therapy until July 1, 2013.

(b)(1) Prior to engaging in the practice of equine teeth floating or equine massage therapy in the state, an individual practitioner shall present to the board signed letters of recommendation from two (2) clients who have previously employed the individual practitioner and who bear witness to the individual practitioner’s ability to perform equine teeth floating or equine massage therapy or both.

(2) The letters of recommendation shall be presented to the board prior to providing service to a client or performing any procedure on any animal.

History. Acts 2011, No. 1031, § 2.

CHAPTER 102

ACUPUNCTURISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-102-102. Definitions.

17-102-102. Definitions.

As used in this chapter:

(1) “Acupuncture” means the insertion, manipulation, and removal of needles from the body and the use of other modalities and procedures

at specific locations on the body for the prevention, cure, or correction of a malady, illness, injury, pain, or other condition or disorder by controlling and regulating the flow and balance of energy and functioning of the patient to restore and maintain health, but acupuncture shall not be considered surgery;

(2) “Acupuncturist” means a person licensed under this chapter to practice acupuncture and related techniques in this state and includes the terms “licensed acupuncturist”, “certified acupuncturist”, “acupuncture practitioner”, and “Oriental acupuncture practitioner”;

(3) “Board” means the Arkansas State Board of Acupuncture and Related Techniques;

(4) “Chiropractic physician” means a person licensed under the Arkansas Chiropractic Practices Act, § 17-81-101 et seq.

(5) “Moxibustion” means the use of heat on, or above, or on acupuncture needles, at specific locations on the body for the prevention, cure, or correction of a malady, illness, injury, pain, or other condition or disorder; and

(6)(A) “Related techniques” means the distinct system of basic health care that uses all allied diagnostic and treatment techniques of acupuncture, Oriental, traditional, and modern, for the prevention or correction of a malady, illness, injury, pain, or other condition or disorder by controlling and regulating the flow and balance of energy and functioning of the patient to restore and maintain health.

(B) As used in this subdivision (6), “related techniques” include, but are not limited to, acupuncture, moxibustion or other heating modalities, cupping, magnets, cold laser, electroacupuncture including electrodermal assessment, application of cold packs, ion pumping cord, lifestyle counseling, including general eating guidelines, tui na, massage incidental to acupuncture, breathing and exercising techniques, and the recommendation of Chinese herbal medicine lawfully and commercially available in the United States. Provided, “related techniques”, including, but not limited to, tui na, shall not involve manipulation, mobilization, or adjustment to the spine or extraspinal articulations.

History. Acts 1997, No. 816, § 2; 2011, No. 859, § 12. deleted “as a doctor of healing arts” following “under this chapter” in (2).

Amendments. The 2011 amendment

CHAPTER 103
SOCIAL WORKERS

- SUBCHAPTER.
- 1. GENERAL PROVISIONS.
 - 3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-103-104. Exemptions.

17-103-104. Exemptions.

(a) This chapter shall not be construed to prevent members of the clergy, Christian Science practitioners, and licensed professionals such as physicians, nurses, psychologists, counselors, and attorneys from doing work within the standards and ethics of their respective professions, provided that they do not hold themselves out to the public by any title or description of services as being social workers as defined under this chapter.

(b) This chapter shall not be construed to limit or prohibit the employment by licensed hospitals in this state of persons who perform services commonly within the definition of social work or practices performed by social workers, so long as the services are performed within the course of and scope of their employment as employees of the hospitals. Nor shall this chapter require any regular employee of a licensed hospital in this state to be licensed as a licensed social worker, a licensed master social worker, or a licensed certified social worker as a condition of employment by or performance of services as a social worker while employed in a licensed hospital in this state.

(c) This chapter shall not be construed as limiting the activities and services of a graduate or undergraduate student for the practice of social work from an accredited educational institution.

(d)(1) This chapter shall not be construed to require any person to be licensed as a licensed social worker who is engaged in the practice of a specialty as an employee of any agency or department of the state in the following job classifications, but only if engaged in that practice as an employee of such an agency or department:

- (A) Family service worker;
- (B) Social service worker; and
- (C) Adult protective services worker.

(2) It is the intent of the General Assembly to restrict licensure to those individuals who are represented to be social workers. It is not the intent of the General Assembly to license persons such as state employees in the job classifications of social service workers and family service workers.

History. Acts 1999, No. 1122, § 1; substituted “This chapter shall not” for 2009, No. 297, § 1; 2011, No. 859, § 13. “Nothing in this chapter shall” at the

Amendments. The 2011 amendment beginning of (a), (b), (c), and (d)(1).

SUBCHAPTER 3 — LICENSING

SECTION.

17-103-307. Criminal background checks.

17-103-307. Criminal background checks.

(a) Each first-time applicant for a license issued by the Arkansas Social Work Licensing Board shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) Except as provided in subdivision (m)(1) of this section, no person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Negligent homicide as prohibited in § 5-10-105;
- (5) Kidnapping as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree as prohibited in § 5-11-103;
- (7) Permanent detention or restraint as prohibited in § 5-11-106;
- (8) Robbery as prohibited in § 5-12-102;
- (9) Aggravated robbery as prohibited in § 5-12-103;
- (10) Battery in the first degree as prohibited in § 5-13-201;
- (11) Aggravated assault as prohibited in § 5-13-204;
- (12) Introduction of a controlled substance into the body of another person as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree as prohibited in § 5-13-301;
- (14) Rape as prohibited in § 5-14-103;
- (15) Sexual indecency with a child as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;
- (17) Incest as prohibited in § 5-26-202;
- (18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;

(19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;

(20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;

(21) Permitting abuse of a minor as prohibited in § 5-27-221(a);

(22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;

(23) Felony adult abuse as prohibited in § 5-28-103;

(24) Theft of property as prohibited in § 5-36-103;

(25) Theft by receiving as prohibited in § 5-36-106;

(26) Arson as prohibited in § 5-38-301;

(27) Burglary as prohibited in § 5-39-201;

(28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 — 5-64-442;

(29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;

(30) Stalking as prohibited in § 5-71-229;

(31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;

(32) Computer child pornography as prohibited in § 5-27-603; and

(33) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

(g)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(2) Except as provided in subdivision (m)(1) of this section, upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding such a letter of provisional licensure has pleaded guilty or nolo contendere to or been found guilty of any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsection (f) and subdivision (g)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(i) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative or the person whose license is subject to revocation or his or her authorized representative. No record, file, or document shall be removed from the custody of the department.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(k) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than this background check.

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m)(1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (f) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (m)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

(A) Capital murder as prohibited in § 5-10-101;

(B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(C) Kidnapping as prohibited in § 5-11-102;

(D) Rape as prohibited in § 5-14-103;

(E) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;

(F) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205 and endangering the welfare of a minor in the second degree as prohibited in § 5-27-206;

(G) Incest as prohibited in § 5-26-202;

(H) Arson as prohibited in § 5-38-301;

(I) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201; and

(J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

History. Acts 1999, No. 1122, § 1; 2003, No. 1087, § 17; 2003, No. 1384, § 1; 2005, No. 1923, § 4; 2011, No. 570, § 123.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The in-

tent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment,

in (f)(28), inserted "the former" and "and
§§ 5-64-419 — 5-64-442."

